

ALBERTA
ENVIRONMENTAL APPEALS BOARD

DECISION

Date of Decision – September 29, 2015

IN THE MATTER OF sections 91, 92, 93, and 95 of the *Environmental Protection and Enhancement Act*, R.S.A. 2000, c. E-12, and section 115 of the *Water Act*, R.S.A. 2000, c. W-3;

-and-

IN THE MATTER OF appeals filed by Laura Peaire and Paula McGinnis with respect to *Water Act* Licence No. 00317655-00-00 and *Water Act* Approval Nos. 00317639-00-00, 00317644-00-00, and 00320022-00-00 issued to BURNCO Rock Products Ltd. by the Director, Red Deer-North Saskatchewan Region, Alberta Environment and Sustainable Resource Development.

Cite as: *Peaire and McGinnis v. Director, Red Deer-North Saskatchewan Region, Alberta Environment and Sustainable Resource Development, re: BURNCO Rock Products Ltd.* (29 September 2015), Appeal Nos. 15-003-010-ID1 (A.E.A.B.).

BEFORE:

Mr. Alex MacWilliam, Panel Chair.

PARTICIPANTS:

Appellants: Ms. Laura Peaire and Ms. Paula McGinnis.

Approval Holder: BURNCO Rock Products Limited.

Director: Mr. Mohammad Habib, Director, Red Deer-North Saskatchewan Region, Alberta Environment and Sustainable Resource Development, represented by Ms. Michelle Williamson, Alberta Justice and Solicitor General.

EXECUTIVE SUMMARY

Alberta Environment and Sustainable Resource Development issued three *Water Act* Approvals and a *Water Act* Licence to BURNGO Rock Products Ltd. on April 8, 2015.

On May 25, 2015, the Board received Notices of Appeal from Ms. Laura Peaire and Ms. Paula McGinnis (the Appellants) appealing the Approvals and Licence.

As the appeals of the Approvals were filed outside the 7-day time limit provided in the *Water Act*, the Board requested the Appellants provide reasons why the appeals were filed past the time limit and why an extension of time to appeal should be granted.

Upon review of the written submission provided by the Appellants, the Board denied the Appellants' request to file their appeals of the Approvals after the legislated time limit. The Appellants did not demonstrate that extenuating circumstances existed that prevented them from filing their Notices of Appeal in time.

The Board dismissed Ms. Peaire's and Ms. McGinnis' appeals of the three *Water Act* Approvals. Their appeals of the *Water Act* Licence were filed within the 30-day time limit and are validly before the Board.

TABLE OF CONTENTS

I. BACKGROUND	1
II. SUBMISSION	2
III. ANALYSIS.....	3
IV. CONCLUSION.....	5

I. BACKGROUND

[1] On April 8, 2015, the Director, Red Deer-North Saskatchewan Region, Alberta Environment and Sustainable Resource Development¹ (the “Director”) issued *Water Act* Licence No. 00317655-00-00 (the “Licence”) and *Water Act* Approval Nos. 00317639-00-00, 00317644-00-00, and 00320022-00-00 (collectively, the “Approvals”) under the *Water Act*, R.S.A. 2000, c. W-3, to BURNCO Rock Products Ltd., (the “Approval Holder”), for a sand and gravel pit operating in Parkland County, Alberta. The Licence authorizes the operation of works and the diversion of water up to a maximum of 99,000 cubic metres annually from an aquifer accessed by pits on N½ 15, E½ 16, SE 21, and SW 22 in 53-3-W5M for commercial purposes. The Approvals allow for the construction and maintenance of seven end pit water bodies and the operation of a works to drain up to 250,000 cubic metres of water annually from the recharge ponds and from the release points to the Bellhouse Water Management Project and the tributary to Mink Creek for the purpose of dewatering, and to infill wetlands to accommodate the development of the sand and gravel extraction operation.

[2] On May 25, 2015, the Environmental Appeals Board (the “Board”) received Notices of Appeal from Ms. Laura Peaire and Ms. Paula McGinnis (collectively, the “Appellants”) appealing the Licence and Approvals.

[3] On June 1, 2015, the Board wrote to the Appellants, Approval Holder, and Director (collectively, the “Participants”) acknowledging receipt of the Notices of Appeal and notifying the Approval Holder and the Director of the appeals.

[4] The Approvals were issued on April 8, 2015, and the Appellants’ Notices of Appeal in relation to the Approvals were filed on May 25, 2015, outside of the 7-day time limit for filing a Notice of Appeal for an approval as prescribed in the *Water Act*. In accordance with its standard practice, the Board asked the Appellants to provide the Board with reasons why they should be allowed an extension of time to appeal the Approvals and to explain why their appeals were filed outside the 7-day time limit.

[5] On June 8, 2015, the Board received the Appellants’ response.

¹ At the time the Approvals and Licence were issued, the Department was called Alberta Environment and

[6] On July 27, 2015, the Board notified the Participants that the appeals of the Approvals were dismissed for being filed late and that reasons would be provided at a later date. These are the Board's reasons.

II. SUBMISSION

[7] The Appellants stated that, even though they have worked within the system for many years, they are not "innately" familiar with all of the regulations.

[8] The Appellants believed they had 30 days to submit their Notices of Appeal and did not check the rules further. The Appellants noted the letter from the Director advising them of the decisions stated there were strict time limits for filing a Notice of Appeal, but it did not specify the time limits nor indicate where the rules containing the appeal periods could be found.

[9] The Appellants acknowledged they made an error in not checking the 7-day appeal period for the Approvals. They stated the Approvals and Licence are intertwined. The Appellants argued that the fact the Notices of Appeal for the Approvals were filed a few days late does not compare to the breadth and scope of the project and does not negate the validity of their concerns.

[10] The Appellants said they were not requesting a stay of the Approvals, so the small delay in submitting their Notices of Appeal would not cause any undue hardship to the Approval Holder.

[11] The Appellants asked the Board to allow them to submit all of their Notices of Appeal together, rather than piecemeal, even though the appeal periods are different for the Approvals and Licence.

[12] The Appellants submitted that granting an extension would cause no harm, the Approvals and Licence are bound together by the magnitude of the project, and the delay in filing the Notices of Appeal was not done with malice or disrespect. The Appellants asked that their concerns be addressed.

III. ANALYSIS

[13] In considering the Appellants' request for an extension of time to appeal, the Board refers to sections 116(1)(ii) and 116(2) of the *Water Act*, in which the time limits for filing a Notice of Appeal with the Board, are dealt with. Sections 116(1) and 116(2) of the *Water Act* state:

- “(1) A notice of appeal must be submitted to the Environmental Appeals Board
 - (a) not later than 7 days after ...
 - (ii) in the case of an approval, receipt of notice of the decision that is appealed from or the last provision of notice of the decision that is appealed from.
 - (b) in any other case, not later than 30 days after receipt of notice of the decision that is appealed from or the last provision of notice of the decision that is appealed from.
- (2) The Environmental Appeals Board may, on application made before or after the expiry of the period referred to in subsection (1) extend that period, if the Board is of the opinion that there are sufficient grounds to do so.”

[14] The issue before the Board is whether there are sufficient grounds to cause it to exercise its discretion under section 116(2) to extend the 7-day period for the Notices of Appeal filed with respect to the Approvals.

[15] In its previous decisions relating to late-filed appeals, the Board determined that certainty is an important element to take into consideration. In this case, certainty involves the specific deadlines for appealing approvals under the *Water Act*.

[16] As stated in previous decisions,² the Board considers certainty as a cornerstone to the appeal process. By having set time limits in which to file a Notice of Appeal, the participants involved will know when the process is complete. The time limits included in the legislation, and the certainty they create, balances the interests of all participants in the regulatory process. If no time limits were placed on the appeal period, the applicant for an approval would never

² See: *Biggart v. Director, Central Region, Regional Services, Alberta Environment re: Town of Innisfail* (24 November 2003), Appeal No. 03-039-D (A.E.A.B.); *Moses v. Director, Central Region, Regional Services, Alberta Environment re: Ducks Unlimited Canada* (29 November 2004), Appeal No. 04-001-ID1 (A.E.A.B.); and *Visscher v. Director, Northern Region, Environmental Management, Alberta Environment, re: Provident Energy Ltd.* (07 February 2011), Appeal Nos. 10-011-012-ID1 (A.E.A.B.).

know when it could proceed with its project, as there would always be the possibility of an appeal that could result in variations to, or the reversal of, the approval. Once the appeal period has ended, the right of the approval holder to proceed with its project based on the known terms and conditions in the approval crystallizes.

[17] Therefore, the Board is generally reluctant to allow extensions to file a Notice of Appeal except under exceptional circumstances. Unless an appellant can demonstrate there were exceptional circumstances that resulted in its notice of appeal being filed late, the Board will generally not exercise its discretion to extend the time limit.

[18] As in the *Biggart* case, where the appellant did not provide sufficient reasons to justify allowing an extension of the appeal period, the Board commonly dismisses late-filed appeals, because allowing an extension of time to appeal without extenuating circumstances would undoubtedly promote uncertainty.

[19] In this case, the Appellants filed their Notices of Appeal on May 25, 2015, 47 days after the Director issued the Approvals on April 8, 2015. In their Notices of Appeal, Ms. Peaire and Ms. McGinnis stated they received notice that the Approvals had been issued on April 24 and April 27, 2015, respectively. The *Water Act* requires a Notice of Appeal with respect to an approval to be filed no later than seven days after receipt of notice of the decision that is appealed. Since the Appellants received notice of the decision on April 24 and April 27, 2015, the appeal period ended on May 1, 2015, for Ms. Peaire and on May 4, 2015, for Ms. McGinnis. The Notices of Appeal were filed 24 and 21 days late respectively.

[20] The Board acknowledges the 7-day appeal period in section 116(1)(a) of the *Water Act* creates a small window in which a directly affected person must file a Notice of Appeal. However, in this case, both Appellants were familiar with the Board's process and were aware that strict time limits existed. Both Appellants were involved in decisions regarding the timing of their appeals in respect of decisions on previous appeals.³ Both previous decisions involved the filing of Notices of Appeal relating to approvals issued under the *Water Act*. The

³ See: Preliminary Motion: *Peaire v. Director, Central Region, Operations Division, Alberta Environment*, re: *BURNCO Rock Products Ltd.* (20 September 2011), Appeal Nos. 11-017-018-ID1 (A.E.A.B.); and Preliminary Motion: *McGinnis v. Director, Central Region, Operations Division, Alberta Environment and Water*, re: *BURNCO Rock Products Ltd.* (01 February 2012), Appeal Nos. 11-097-099-ID1 (A.E.A.B.).

Appellants should have been aware of the existing time limits, and if they were uncertain, they could have contacted the Board or reviewed the decisions that related to their previous appeals.

[21] The Board understands the Approvals and Licence are intertwined in that they relate to the same project, but this does not alter the fact they have differing time limits for filing appeals under the *Water Act*.

[22] The Board is of the view that the Appellants did not provide evidence of extenuating circumstances to provide sufficient grounds to allow the Board to extend the appeal period for the Approvals. Therefore, the appeals of the Approvals are dismissed.

[23] The Board notes the Director did not provide any indication to the Appellants that there were two different time limits for filing appeals in this case. In the Board's view, the Director should be providing Statement of Concern filers with this information when advising there are time limits for filing a Notice of Appeal, particularly when several decisions have been made, as in this case.

IV. CONCLUSION

[24] Upon review of the legislation and the written submissions from the Appellants, the Board is of the opinion that there are not sufficient grounds to warrant an extension of the statutory appeal period. Accordingly, the Appellants' Notices of Appeal are not valid and their appeals of the *Water Act* Approvals (Appeal Nos. 15-004, 005, 006, 008, 009, and 010) are dismissed.

[25] The appeals of the Licence (Appeal Nos. 15-003 and 007) issued under the *Water Act* were filed within the legislated timeframe, and the Appellants can proceed with these appeals.

Dated on September 29, 2015, at Edmonton, Alberta

Original signed by
Alex MacWilliam
Panel Chair